

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BACKPAGE.COM, LLC,

Plaintiff,

and

THE INTERNET ARCHIVE,

Plaintiff-Intervenor,

v.

ROB MCKENNA, Attorney General of the
State of Washington, *et al.*

Defendants, in their
official capacities.

No. 2:12-cv-000954-RSM

**ORDER ENJOINING
ENFORCEMENT OF
WASHINGTON SENATE BILL
6251**

This matter came before the Court on the Motion for Preliminary Injunction filed by Plaintiff Backpage.com, LLC (Dkt. #2) and the Motion Joining in the Motion for a Preliminary Injunction filed by Plaintiff-Intervenor, the Internet Archive (Dkt. #34). Having considered the Motions, materials filed in support of and opposition to the Motions, and the argument of counsel, the Court finds, concludes and orders as follows:

I. FINDINGS OF FACT

1. Washington Senate Bill 6251 (“SB 6251”) would have taken effect June 7, 2012 unless enjoined by this Court.

2. On June 5, 2012, the Court entered a Temporary Restraining Order (“TRO”), enjoining enforcement of SB 6251 for a period of fourteen days (Dkt. #7). The parties thereafter stipulated to a continuance of the hearing on the Preliminary Injunction Motion and to an extension of the TRO (Dkt. #17).

3. The Court heard oral argument from the parties on July 20, 2012, and issued an Order Granting Plaintiffs’ Motions for Preliminary Injunction on July 27, 2012 (Dkt. #69). That Order directed the parties to submit a joint proposed order preliminarily enjoining enforcement of SB 6251 within ten days.

4. Counsel for the Plaintiffs and counsel for Defendants (the Attorney General and the King County Prosecutor, which additionally represents 36 of the other county prosecutor Defendants), submitted this joint Proposed Order on August 6, 2012.

II. CONCLUSIONS OF LAW

5. Plaintiffs have standing as they can show that there is a credible threat that SB 6251 will be enforced against them.

6. Third-party standing is also appropriate in this case because, if the statute were to take effect, it may cause others to refrain from constitutionally protected speech or expression.

7. Plaintiffs have shown a likelihood of success on the merits of their claims, pursuant to 27 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, as set forth more fully below.

8. Plaintiffs have shown a likelihood of success on their claim that SB 6251 is preempted by section 230 of the Communications Decency Act, 47 U.S.C. § 230.

9. Plaintiffs have shown a likelihood of success on the merits of their claim that SB 6251 violates the First and Fourteenth Amendments to the United States Constitution because it lacks an appropriate element of scienter to avoid chilling protected speech.

10. Plaintiffs have shown a likelihood of success on the merits of their claim that SB 6251 violates the First and Fourteenth Amendments because the law is unconstitutionally vague.

11. Plaintiffs have shown a likelihood of success on the merits of their claim that SB 6251 violates the First and Fourteenth Amendments because the law is overbroad and not narrowly tailored to the State's asserted governmental interest.

12. Plaintiffs have shown a likelihood of success on the merits of their claim that SB 6251 violates the dormant Commerce Clause, U.S. Const., Art. 1, § 8.

13. Because SB 6251 will result in the immediate loss of First Amendment rights, this Court may presume that irreparable harm will result. Plaintiffs have also shown that they, other online service providers, and the public generally will suffer irreparable harm if SB 6251 goes into effect.

14. The balance of equities tips in Plaintiffs' favor.

15. An injunction is in the public interest.

THEREFORE, the Court ORDERS as follows:

(A) Defendants are immediately ENJOINED from taking any actions to enforce SB 6251 or pursue prosecution under the law in any way;

(B) This Preliminary Injunction shall take effect immediately and remain in effect until the conclusion of this lawsuit or other direction of the Court.

SO ORDERED this 25 day of September 2012.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

1 Presented by:

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